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(2)

Division Bench (riminal)

(13350)

15/10/99
Filed on ..... by Shri O.P. Mishra ..... Advocate

Rba A.P.

Received Criminal Petition with Annexures

25/10 CLERK
O/o. Advocate General
M. P. JABALPUR

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 2811 ---------of 1999

Appellant. (In Jail) ::: Dakhal son of Late Thakur Prasad, aged about 26 years, R/o Ramnagar, P.S. Jainagar, Distt: Sarguja M.P.

Vs.

Respondent. ::: The State of M.P. Through the P.S. Jainagar, Distt: Sarguja M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CR.P.C. 1973.

Conviction.	Sentence.
U/S. 302 IPC.	Life Imprisonment and fine of Rs. 1000/- in default of fine R.I. for 1 year more.

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.Y. A. NO. 28 11 सन् 200 99

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

5-1-2006

Shri Shivraj Singh, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Alok Bakshi, Govt. Advocate for the State/respondent.

Oral judgment.

By this appeal under Section 374 (2) of the Cr.P.C., accused/appellant Dakhal has questioned the legality of the judgment of conviction and order of sentence dated 25th August 1999 passed by the Additional Sessions Judge, Surajpur, District Surguja in Sessions Trial No. 395/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing murder of his own father Thakur Prasad, sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 1 year.

The case of the prosecution, in brief, is that on 7-6-93 PW-2 Budhram (Kotwar) along with accused Dakhal appeared before the S.H.O. police station Jai Nagar at about 11.30 a.m. and reported that today at about 8.30 a.m. when he was at his residence, accused Dakhal came to his house and informed that he has committed murder of his father by

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

attacking him with a sword on his neck and arm. He also informed that his father was in the habit of coming to the house after consuming liquor and used to abuse. On hearing this he along with the accused, witnesses Doodhnath Ram, Pancham Das, Phoolsai and others went to the house of Thakur Prasad where he saw that the body of Thakur Prasad was lying on the ground, there were injuries on the neck and arm and blood was oozing out of-it. Accused Dakhal confessed before all the persons that he has committed murder of his father with a sword and he brought the sword. On this information, the S.H.O. Police Station registered the F.I.R. Ex.-P/2, left for the scene of occurrence, after giving notice to the Panchas, prepared Panchanama (Ex.-P/5) of the dead body. The sword, weapon of offence, which was produced by the accused at the time of lodging the report, was taken into possession under Ex.-P/3. From the place of occurrence plain soil and blood stained soil as well as one Sari stained with blood, one Gudri (beggars bedding) stained with blood were taken into possession under Ex.-P/6. The dead body of Thakur Prasad was sent for postmortem examination to the Government Hospital, Bishrampur where Dr. D.K. Dwivedi conducted the postmortem and prepared postmortem report Ex.-P/10. The doctor on the request of the S.H.O., Jai Nagar gave ~~the information~~ (his opinion) Ex.-P/11 that the injuries which were found on the body of the deceased could be caused by the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sword in question. The blood stained articles were sent for examination to the Forensic Science Laboratory, Raipur from where report Ex.-P/12 was received.

After completion of the investigation, S.H.O. submitted a charge sheet in the Court of Judicial Magistrate, 1st Class, Surajpur who in turn committed the case to the Sessions Judge, Surajpur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the charge against the accused examined 10 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. by the learned Additional Sessions Judge in which he denied the prosecution evidence and stated that he is innocent, the police was not able to identify the correct accused and he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the argument of Additional Public Prosecutor and counsel for the accused passed the impugned judgment convicting and sentencing the accused as mentioned in para-1 of this judgment.

Learned counsel for the accused/appellant did not dispute the fact of homicidal nature of death of Thakur Prasad. Apart from that, PW-8 Dr. D.K. Dwivedi in his evidence has stated that he found 7 injuries on the body of Thakur Prasad, the cause of death was shock as a result

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of haemorrhage and the death was homicidal in nature. Report is Ex.-P/10. PW-2 Budhram and PW-10 Pancham Das have sated that the accused made extra judicial confession before them that he had murdered his father by attacking with the sword. Therefore, it is established that the death of Thakur Prasad was homicidal in nature.

As far as involvement of the accused/appellant is concerned, there is no direct or ocular evidence in this matter. The whole case rests on the circumstantial evidence i.e. extra judicial confession made by the accused and the recovery of the blood stained sword. PW-2 Budhram who is the village Kotwar has stated that the accused came to him in the morning and informed that he has committed murder of his father. On his enquiry, the accused disclosed that he has committed murder of his father by attacking with a sword. On further enquiry as to why he has committed murder, he ~~has~~ he stated that his father used to come after consuming liquor. On asking by him, he refused to give him meat. PW-3 Doodhnath Ram, PW-4 Phoolsai, PW-5 Dasmet Bai and PW-7 Moharmaniya have turned hostile. PW-7 Moharmaniya has corroborated the fact to the extent that in the fateful night his father came after consuming liquor, quarreled with his mother and beaten his mother. Her father brought meat and asked her to cook the same on which she cooked the meat. PW-10 Pancham Das has corroborated the evidence of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-2 and stated that on information by Budhram he also went to the scene of occurrence where the accused made extra judicial confession before them regarding the commission of murder of his father with a sword.

From the evidence of these witnesses, it appears that the accused made extra judicial confession voluntarily and immediately. Nothing has been elicited in the cross-examination of these witnesses which makes the evidence of these witnesses unreliable or untrustworthy. Both these witnesses are independent witnesses. There was no reason before these witnesses to implicate the accused in a false case. The extra judicial confession made by the accused before these witnesses stands corroborated by the fact that the sword with which the accused attacked his father Thakur Prasad was produced by him before the S.H.O. at the time of lodging the report at the police station and same was stained with blood. The F.S.L. report also shows that the sword was stained with blood. The extra judicial confession further stands supported by the map Ex.-P/1 which was prepared by the Patwari PW-1 in which it has been shown that where the body of Thakur Prasad was lying and blood was present. PW-8 Dr. D.K. Dwivedi has stated that the sword in question was sent to him for his opinion and he gave opinion Ex.-P/11-A to the effect that the injuries which were found on the body of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased could be caused by the sword in question. Therefore, in view of the above circumstantial evidence, extra judicial confession made by the accused before PW-2 and PW-10 stands corroborated.

In view of the above, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court, same is based on the legal clinching evidence, therefore, there is no reason before us to interfere with the finding of the trial Court.

In the result, the appeal has no merit, same, being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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